lessee. See *Swords* v. *Eager*, 59 N. Y. 28; *House* v. *Metcalf*, 27 Conn. 630. Statutes requiring buildings to be provided with fire escapes impose a duty unknown to the common law. *Jones* v. *Granite Mills*, 126 Mass. 84, 30 Am. Rep. 661. Under the facts of the present case, it would seem to be the better rule, to place the duty of providing fire escapes upon the lessor and not upon the lessee, since such an improvement is one of a permanent nature, and it has been so held. *Landgraf* v. *Kuh*, 188 Ill. 484, 59 N. E. Rep. 501.

The principal case however finds support in the construction of similar statutes in Ohio and Pennsylvania, where the lessor has been relieved from liability and the whole duty, in the absence of contract, held to rest upon the lessee. *Schott* v. *Harvey*, 105 Pa. St. 222, 51 Am. Rep. 201; *Lee* v. *Smith*, 42 Ohio St. 458, 51 Am. Rep. 839.

MASTER AND SERVANT—FELLOW SERVANT—MASTER'S DUTY—DELEGATION OF DUTY.—While testing a new machine which was attached to other machinery, the defendant's superintendent ordered the speed of the engine to to be increased without first detatching the other machinery. As a result of the increased speed an emery wheel attached to the other machinery burst and killed one of the laborers. In an action against the company for damages for for the death of the laborer, *Held*, the act of the superintendent in increasing the speed of the engine without detaching the machinery was the negligent act of a vice principal for which the defendant was liable. *Skelton et al* v. *Pacific Lumber Co.* (1903),— Cal. —, 74 Pac. Rep. 13.

The court holds that the question, whether one is the fellow servant of another is to be determined by the nature of the act which caused the injury without regard to the rank or grade of the servants. It was the duty of the defendant to see that the machinery was reasonably safe, and if the master delegate such a duty to the greatest or the least of his servants, such servant, in discharging that duty, is a vice principal—he is in the master's shoes. The courts are not in accord as to the proper test for the fellow servant relation, but the one applied in the principal case is approved in several courts of this country. *Jenkins* v. *Richmond & D. R. Co.*, 39 S. C 507; *Mann* v. *Delaware & H. Canal Co* , 91 N. Y. 495; *Wooden* v. *Western N. Y. & P. R. Co.*, 147 N. Y. 508; *Norfolk & Western R. Co.*,v. *Donelly*, 88 Va. 853; *Baltimore & Ohio R. Co.* v. *Baugh*, 149 U. S. 368; *New England R. Co.* v. *Conroy*, 175 U. S. 323; *Vartanian* v. *New York, N. H & H. R. Co.* (1903), —R. I.—, 56 Atl. Rep. 184; *Coal Creek Min. Co.* v *Davis*, 90 Tenn. 711; *Jackson* v. *Norfolk & Western R. Co.*, 43 W. Va. 380, 46 L. R. A. 337 and notes; *Van Derhoff* v. *New York Cent. & H. R. R. Co.* (1903), 84 N. Y. Supp. 650; 2 JAGGARD ON TORTS, 1043. See 2 MICHIGAN LAW REVIEW 79. For a discussion of the fellow servant doctrine in England see Pollock on Torts (6th ed.), p. 95 et. seq.

MASTER AND SERVANT—INJURIES TO SERVANT—FELLOW SERVANTS—BRAKEMAN AND CONDUCTOR.—The conductor of a construction train ordered the brakeman to make a coupling in a defective manner. While obeying this order the brakeman was injured. In an action against the railroad company for the injury, *Held*, the plaintiff could recover. *Grout et al.* v. *Tacoma Eastern R. Co.* (1903),—Wash —, 74 Pac. Rep. 665.

One of the defenses was that the brakeman and conductor were fellow servants, but the court held that they were not fellow servants, so as to charge the brakeman with the conductor's negligence. The decision is based upon the "superior servant" rule as was the earlier case of *Northern Pacific R. Co.* v. *O'Brien*, 1 Wash. 599. This doctrine finds its ablest support in Ohio and Kentucky. *Little Miami R. Co.* v. *Stevens*, 20 Ohio, 415; *Cleveland C.*

& C. R. Co. v. *Keary*, 3 O. St. 201; *L. & N. R. Co.* v. *Collins*, 2 Duv. (Ky.) 114, 87 Am. Dec. 486; *L. & N. R. Co.* v. *Moore*, 83 Ky. 675; *Green* v. *L. & N. R. Co.*, 94 Ky. 169. It has found some support, but has not been uniformally followed in some other states. *Chicago, St. P. M. & O. R. Co.* v. *Lundstrom*, 16 Neb. 254, 49 Am. Rep. 718; *Miller* v. *Missouri Pac. R. Co.*, 109 Mo. 350, 19 S. W. Rep. 58; *Nashville, etc. R.* v. *Whelus*, 10 Lea (Tenn.) 741; *Moon's* v. *Admr's.* v. *Richmond & Allegheny R. Co.*, 78 Va. 745, 49 Am. Rep. 401. In Texas the power of control must be coupled with the power to employ and discharge in order to render a servant a vice principal. *Texas C. R. Co.* v. *Frazier*, 90 Tex. 33; *Campbell* v. *Cook*, 86 Tex. 630. A contract by which railway employees agree not to hold the company liable for injuries caused by the negligence of conductors is invalid on the ground of public policy. *Lake Shore & M. S. R Co.* v. *Spangler*, 44 O. St 471, 58 Am. Rep. 833. In the following cases the conductor is held to be a fellow servant of the other trainmen; *Dillon* v. *Union P. R Co.*, 3 Dill. 319; *Jenkins* v. *Richmond & D. R. Co.*, 39 S. C. 507; *Pease* v. *Chicago & N. W. R. Co.*, 61 Wis. 163; *Hoover* v. *Beech Creek R. Co.*, 154 Pa. St. 362; *Sherman* v. *Rochester & S. R. Co.*, 15 Barb. 574, 17 N. Y. 153; *Jackson* v. *N. & W. R. Co.*, 43 W. Va. 380, 46 L. R. A. 337; *N. & W. R. Co.* v. *Swaine*, 95 Va. 398, 46 L. R. A. 359; *Congrave* v *So. Pac. R. Co.*, 88 Cal. 360; *St. L. I. M. & S. Ry. Co.* v. *Shackelford*, 42 Ark. 417, Contra; *Georgia Pac. Ry. Co.*, 92 Ala. 300, 25 Am. St. Rep. 47; *VanAmberg* v. *Vicksburg S. & P. R. Co.*, 37 La. Am. 650, 55 Am. Rep. 517; *Shadd* v. *Georgia, C. & N. R. Co.*, 116 N. C. 968. See following note.

MORTGAGE—INSURANCE—RIGHTS OF MORTGAGEE—COVENANTS RUNNING WITH THE LAND.—K, the mortgagee of certain premises, assigned the mortgage which contained a covenant that the mortgagor should keep the premises insured, and in case he failed so to do, the mortgagee might effect such insurance. K, subsequently purchased the equity of redemption and insured the premises for his own benefit. The property was destroyed by fire and the insurance money was paid to K, on his giving an indemnity bond to keep the company harmless in case it was compelled to pay the insurance to another. In the action by the executor of the assignee of the mortgage against the Insurance Company and K, *Held*, that K was liable for the sum as principal debtor and the company as his surety. *Hyde* v. *Hartford Fire Insurance Co.* (1903), — Neb. —, 97 N. W. Rep. 629.

Some courts hold that a covenant to insure made in a mortgage is a covenant running with the land. *In re The Sands Ale Brewing Co.*, 3 Biss. 175. Wherever this holding obtains a subsequent purchaser of the land would be bound by the covenant. Other courts hold that the agreement to insure is personal in its nature and does not run with the land *Cromwell* v. *Insurance Co.*, 44 N. Y. 42; *Dunlap* v. *Avery*, 89 N. Y. 592. The court in the principal case, saying that it was unnecessary to discuss whether or not the agreement to insure was a covenant running with the land, *Held*, that it would be inequitable and against public policy not to allow the assignee of the mortgage an equitable lien on the proceeds of the policy. Applying the rule in Spencer's Case, 1 Smith's leading Cases, 55, viz., that "a covenant is said to run with the land when either the liability to perform it or the right to take advantage of it passes to the assignee of the land," to the holding of the court as a test to determine whether or not the agreement to insure was a covenant running with the land, it would seem that the court impliedly held that it ran with the land, since the assignee of the land was liable for its performance.